

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC**

STERICYCLE, INC.,)		
)		
Respondent,)		
)		
And)	Case Nos.	04-CA-137660
)		04-CA-145466
)		04-CA-158277
Teamsters Local 628,)		04-CA-160621
)		
Charging Party)		

RESPONDENT’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S DECISION

NOW COMES Stericycle, Inc., Respondent herein, and files its Exceptions to Administrative Law Judge’s Decision, as follows:

EXCEPTIONS

Respondent takes exception to the ALJ’s:

1. Order dated August 24, 2016 denying Respondent’s motion to dismiss and his reaffirmation of his ruling precluding Respondent from presenting evidence or calling witnesses in support of its Eighth Affirmative Defense, on the ground that this Order and these rulings denied Respondent due process and constituted an abuse of discretion. (August 24, 2016 Order; JD 2: 1-17).¹

2. Finding that the handbook applied “nationwide,” on the ground that this finding is not supported by substantial record evidence. (JD 17: 36-38).

¹ References to the Judge’s decision are designated as “JD” followed by the appropriate page and line numbers. References to transcript page and exhibit numbers are set forth in Respondent’s Brief in Support of Exceptions.

3. Findings and/or conclusions that “the Company was obligated to notify the Union and afford it a reasonable opportunity to bargain over the handbook provisions before distributing it to unit employees,” and that “[a] notation in the handbook vaguely apprising unit employees that ‘in some cases these policies may be impacting [sic] by collective bargaining agreements’ did not provide them with clear guidance as to the applicable policies affecting certain terms and conditions of employment,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 22: 45-47; 23: 1-3).

4. Finding and/or conclusion that “the Company's February 2015 unilateral implementation of an employee handbook at the Morgantown facility constituted material and significant changes to unit employees terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 23: 5-8).

5. Findings and/or conclusions that the example in the personal conduct policy “is sufficiently vague and is accompanied by a threat of discipline or termination, causing employees to reasonably construe the rule to prohibit Section 7 activity, in violation of Section 8(a)(1),” and “the Company's personal conduct policy was vague, overbroad and in violation of Section 8(a)(1),” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 25: 13-18).

6. Findings and/or conclusions that the conflict of interest policy is overbroad, fails to “clarify a legitimate business interest,” is “vague,” contains a threat of discipline, would reasonably be construed as prohibiting Section 7 activity,” and that “the Company's maintenance of the conflict of interest policy is impermissibly overbroad in violation of Section 8(a)(1) of the

Act,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 25: 42-47; 26:1-2).

7. Finding and/or conclusion that the handbook confidentiality policy is not limited to harassment complaints and resolutions, on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 26: 34-40).

8. Finding and/or conclusion that an “employee could reasonably construe the restriction as prohibiting communications with Board agents or other governmental agencies about complaints related to the workplace or Section 7 activities,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 26:45-47; 27: 1-2).

9. Findings and/or conclusions that “the portion of the harassment policy at issue, requiring that employees ‘*will* keep complaints and the terms of their resolution confidential to the fullest extent practicable,’ can be reasonably interpreted as a rule of conduct preventing employees from engaging in Section 7 protected communications” and that “clarifying that employees’ obligation to maintain confidentiality is not ironclad and only ‘to the fullest extent practicable,’ serves to create further uncertainty in the minds of employees as to whether they might incur adverse consequences if they violate that provision,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 27: 4-15).

10. Finding and/or conclusion that “the Company’s retaliation policy relating to the confidentiality of harassment complaints is overbroad in violation of Section 8(a)(1),” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 27: 16-17).

11. Findings and/or conclusions that the camera/video policy “unqualifiedly prohibit[s] all picture taking or recording on its property, including pictures of ‘people’ or recording ‘conversations;’ that the policy is reasonably interpreted as “totally prohibit[ing] the use of cameras, video and audio recording devices on company property;” that the policy “broadly prohibits the use of such devices at any time on company property without permission from a supervisor or manager;” that “employees would reasonably interpret the rule to prohibit employees from such Section 7 activity as taking pictures of safety violations;” that “The Company did not present evidence of an overriding proprietary interest in such a broad ban on camera and recording devices or “sufficient evidence to show why it could not make an exception in the policy for Section 7 activity,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 29: 3-17).

12. Finding and/or conclusion that “the camera and video policy is unlawfully over broad and insufficiently tailored to protect the Company's legitimate business interests” and that “[a]s currently written, the policy violates Section 8(a)(1) of the Act,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 29: 17-19).

13. Findings and/or conclusions that the information sought by the Union in relation to Article 22.3 of the collective bargaining agreement was relevant to the Union’s duties, that “the Union's request for bargaining notes was relevant to a potential grievance;” that the “Company's vague assertions of privilege and confidentiality also fail;” that the Company “did not seek an accommodation of the interests it sought to protect from disclosure,” and that “by failing to provide information requested by the Union on September 11 and 26, relating to the

recoupment of outstanding employee health insurance costs, the Company failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 30: 2-33).

14. Findings and/or conclusions that “The Union's requests were relevant in order to ascertain the Company's position and comments during bargaining regarding its implementation of Article 23.3;” that “the Company's vague assertions of privilege and confidentiality also fail;” that the “union's need for the information in connection with its grievance prevailed over the Company's interests in shielding from disclosure its potential legal theories for arbitration;” that “At the very least, it was incumbent on the Company to suggest an accommodation by redacting any records encompassing information not related to Article 23.3, legal strategy or other information directly related to the arbitration,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 32: 13-32).

15. Finding and/or conclusion that “the Company's failure to provide internal communications and meeting and bargaining notes requested by the Union on September 5 and 18, 2014, relating to the Company's implementation of Article 23.3 violated Section 8(a)(5) and (1) of the Act,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 32: 42-45).

16. Finding and/or conclusion that “an information request pertaining to mandatory employee training is presumptively relevant as it is a mandatory subject of bargaining,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 33: 8-10).

17. Findings and/or conclusions that “the Company's PowerPoint mandatory presentation on how to recognize and handle Ebola waste obviously sought to prepare employees for a worst case scenario if they ever encountered the deadly material;” that “the potential danger from Ebola had some connection to employee's terms and conditions of employment in handling regulated medical waste; and that “Given the extremely complex and sensitive nature of the information involved, coupled with the Union's assurances of confidentiality, the Company's offer to view the presentation only was unreasonable under the circumstances,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 33: 15-30).

18. Finding and/or conclusion that “the Company's refusal to provide the Union with a copy of Ebola training provided to unit employees, as requested by the Union on November 13 and 18, and December 1, violated Section 8(a)(5) and (1) of the Act,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 33: 32-35).

19. Findings and/or conclusions that “[t]he employee handbook in effect on December 1 was presumptively relevant to the Union's obligations under the CBA as it undoubtedly contained employees' terms and conditions of employment,” and that “[t]he failure to provide a copy of that handbook impeded the Union's ability to effectively represent the interests of unit employees at the Morgantown facility in violation of Section 8(a)(5) and (1) of the Act,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 33: 46-47; 34: 1-5).

20. Findings and/or conclusions that the “Company's 3-month delay in providing information about its vehicle backing program was unreasonable” and that the delay prevented

the Union from effectively representing Clay's interests when he was disciplined,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 34: 26-32).

21. The findings and/or conclusions that the “Company's refusal to provide the Union with a copy of the training video shown to unit employees was unreasonable under the circumstances;” that “[p]ermitting the Union to merely view the video is not the same as producing the video;” and that the “the Union would have an interest referring to it during future bargaining or grievance matters,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 35: 35-39).

22. The findings and/or conclusions that the training video was not "proprietary," and “[a]t the very least, the Company could have insisted on a nondisclosure agreement from the Union,” on the grounds that these findings and/or conclusions are not supported by substantial record evidence and are erroneous as a matter of law. (JD 41-45).

23. The finding and/or conclusion that “the Company's refusal to provide the code of conduct and harassment training video requested by the Union on December 30 violated Section 8(a)(5) and (1) of the Act,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 35: 46-47; 36: 1).

24. Conclusions of Law numbers 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, on the grounds that this conclusions are not supported by substantial record evidence and are erroneous as a matter of law.(JD 37; 38: 1-15).

25. The finding and or conclusion in the Remedy section that “as one or more of the challenged policies have been determined to be overly broad and violate Section 8(a)(1), a nationwide posting by the Company is appropriate since the record establishes that the unlawful

rules or policies are maintained or in effect at all of the Company's facilities within the United States," on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 38: 20-27).

26. The entire Order, including paragraphs 1 and 2 and all subparagraphs, except insofar as certain Complaint allegations are dismissed, on the grounds that this Order is not supported by substantial record evidence and is erroneous as a matter of law. (JD 3: 32-50; 39; 40, 41).

27. The proposed Notice to Employees, on the grounds that this Notice is not supported by substantial record evidence and is erroneous as a matter of law. (Appendix B).

CONDITIONAL EXCEPTIONS

The following exceptions are filed conditionally in the event that either the General Counsel or the Charging Party file exceptions to the Judge's dismissal of the allegation that Respondent unilaterally recouped employee health care deductions over three pay periods:

28. Finding and/or conclusion that "The Company's notification of the first recoupment after it was too late to bargain over the action presented the Union with a fait accompli and, thus, did not afford it with a reasonable opportunity for bargaining," on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 21: 1-6).

29. Finding and/or conclusion that "the Company's second and third recoupments of health insurance costs, however, constituted a more significant amount of employees' wages," on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 21: 37-38).

30. Finding and/or conclusion that “The Company did not afford the Union a reasonable opportunity to bargain over the first recoupment,” on the grounds that this finding and/or conclusion is not supported by substantial record evidence and is erroneous as a matter of law. (JD 22: 10-12).

Respondent respectfully requests that the Second Consolidated Complaint, as amended, be dismissed in its entirety.

Dated this 23rd day of December 2016

/s/ Charles P. Roberts III

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the forgoing EXCEPTIONS by electronic mail
on the following parties:

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This the 23rd day of December 2016.

s/ Charles P. Roberts III